WHAT IS FORGERY?

An interesting prosecution for alleged forgery was begun in 1909 in Washington, D. C., and suddenly and mysteriously dropped. Many of the facts are told in two documents which have never been fitted together. One of these is the Washington, D. C. Law Reporter of Feb. 14, 1913, p. 98, which will be designated as "R". The other is a document which has never been heard of in the press. R gives this indignant account:

"A GRAVE ERROR OF THE ATTORNEY-GENERAL'S OFFICE.

"The record of the proceedings before the supreme court of the District of Columbia in general term, Feb. 7, 1913, brings into public notice an instance of a remarkable use of official power for the perpetration of a gross outrage upon a reputable citizen and member of the bar, the like of which it is to be hoped will not again occur. The disclosure came as the result of a demand made by Mr. J, a member of the bar for nearly 30 years past, in a petition filed by him, praying that his own conduct . . . be investigated by the court through the committee on grievances. The occasion for this action was the discovery by Mr. J that the Attorney-General had, in December, 1909, at the instance of Mr. Assistant-Attorney-General Fowler, authorized another assistant, M, to submit to the grand jury of the District of Columbia, an accusation that Mr. J had been guilty of uttering a forgery.

"The grand jury, on Dec. 8, 1909, returned a presentment against J for uttering a forgery. Twenty-two days later, the solicitor-general voluntarily sent another assistant to the grand jury, Mr. U, to request them to rescind their former action on the express ground that 'admitting the facts as testified to before the grand jury, no crime had been committed', which the grand jury accordingly did.

"The accusation against Mr. J was of an infamous crime, the penalty being 10 years' imprisonment, and was of a particularly heinous character, and the duty to punish it, if it had any foundation, is too obvious to require comment. The subsequent action of the Department in not only abandoning the presentment, but going further and asking the grand jury to rescind the presentment, on the ground that no crime had been committed, without more, would not only of itself establish Mr. J's entire innocence of the accusation, but also the impropriety of having made it, as neither the facts testified to nor the law had changed in the intervening 22 days.

"It appears that Mr. J made the action of the officials of the

Department of Justice the subject of protest and complaint to the President of the United States, in response to which the Attorney-General submitted a voluminous report, a copy of which Mr. J submitted to the Committee on Grievances. So far as disclosed no action whatever has been taken by the President upon the report, which, with Mr. J's comments thereon, has been before him for over a year. The committee on grievances, after an examination of all pertinent facts and records, including the report of the Attorney-General, reported that the accusation against Mr. J was 'without even colorable basis in fact or law' and that 'there never has existed any ground either in law or fact for the supposed charge against Mr. J'.

"The report of the Attorney-General, however, shows more than the mere fact of Mr. J's innocence. It shows that before the accusation was first submitted to the grand jury, the officials of the Department of Justice knew just as well as they did 22 days later, that the charge was false and absolutely unmaintainable, because they knew that the documents as to which the forgery was alleged were genuine. They were not misled or deceived by false statements or concealed facts. . .

"The report of the Attorney-General fully supports the statement made by Mr. J, in print and in oral argument before the court, that the officials of the Department of Justice at the instance of one of the parties in a civil suit, submitted to the grand jury the false accusation of an infamous crime, well knowing that the accusation was false in fact and impossible of support in law. . . No one of the officials concerned has retracted the accusation, admitted Mr. J's innocence, offered any apology or made any suggestion of the slightest reparation of the wrong done".

Naturally, after reading this not short statement, one asks, what are the facts? what was the alleged forgery? why does the writer not wish to say?

Whoever wrote this article overstepped the line at which he should have stopped when he said, "The officials knew the charge was false *because* they knew the documents were *genuine*". If this is the only excuse it is no excuse. The prosecution in this case was based on the ruling in Ex parte Hibbs, 26 F. 421:

"It is contended that a person cannot commit forgery by making a false writing in his own name. But it must be borne in mind that forgery is not confined to the false writing of another name. It may be, from the nature of things, that

it is more often committed in that way, but it may be committed in other ways. * * * Admitting the *genuineness* of these instruments, and nothing appears to the contrary, they had the legal efficacy sufficient to make them an efficient means of fraud."

John Smith may sign his name to a "genuine" check on some bank. But if he uses that genuine thing as the check of another John Smith, he commits forgery.

What the above indignant account did not like to mention will be given here, from a record of Congress, pp. 249-256 of the printed Hearing before the House of Representatives' committee on Expenditures in the Interior Department. This will be referred to as "H". It is a statement made by one of the witnesses to the alleged forgery:

"About June 16, 1908, I took my little son from Washington, D. C., to the Massachusetts seashore. His divorced mother and a Washington lawyer, J, and an Assistant U. S. Attorney, conspired to deceive a grand jury with the false pretense that she had a decree granting her the custody of the child in the District of Columbia. On this false pretense they obtained disbursements of money of the United States, and an indictment charging me with abduction. On July 1 the child was seized by them by means of this misappropriation of Government money. On July 6, threatened with an exposure not expected, one of them induced Deputy-Register-of-Wills T, to forge a record of the probate court of the District of Columbia, by which it was made to appear that I was not guardian of the child. T falsely made a certificate, to which he attached the seal of the probate court. It purported to certify what it called 'Case 3517, guardian docket', describing the case as entitled 'In the matter of the guardianship of Y, minor, case 3517, guardian docket'. This 'Case 3517, guardian docket' is that of L, having nothing to do with Y. The guardian dockets referred to by this false certificate show that there is no case in the probate court of anyone by the name of Y. The sham certificate represented that I had petitioned the probate court to be appointed guardian, and J afterwards admitted that the object was to make it appear that the petition was pending in court July 6, 1908, not granted, thus constituting an admission by me on the records of the court that I was not guardian of my son when I took him to Massachusetts. The certificate was not used in Massachusetts otherwise than secretly. It will be found now in the case 495 habeas corpus, D. C. supreme court, where it

was filed July 15, 1908 as an exhibit, intending to excuse it verbally as a mistake, but leaving it in the record, thus making a false record, purporting to give a probate court case which never had any existence. . .

"I reported the matter as soon as I discovered it to the Attorney-General. The case was referred to Assistant-Attorney-General F. . . On Dec. 8, 1909, Mr. A. Bruce Bielaski and I went before the grand jury. . . The jury returned a presentment. . . They recommended that T should be indicted for forgery and J for uttering. Mr. F's home is in Tennessee and it happened that he went home for the Christmas holidays. . . In his absence somebody got the case suppressed"

The truth of the matter then was that while the officials of the department of Justice who obtained the vote of the grand jury to indict, were away during the Christmas holidays, pressure was brought to bear, not on the Attorney-General who ordered the indictment but on one of his subordinates to withdraw the prosecution. At that time there was no statute punishing the making of a false certificate by the clerk of a court (see the date of the legislation in the present Criminal Code). But the statute was not necessary. Says Ex parte Hibbs, 26 F. 433:

"The case comes within the well-known rule that it is forgery for an agent, who has authority to fill, with a particular sum, a blank in a paper signed by his principal, to fill it with a larger sum, or to fill it at all without authority".

T, as the agent of the United States, had authority to sign its seal to a true certificate, only. Ex parte Hibbs quotes English precedents:

"In 3 Bac. Abr. 745 it is said, 'Forgery does not so much consist in the counterfeiting of a man's hand or seal, as in endeavoring to give an appearance of truth to a mere deceit and falsity; or at least to make a man's own act appear to have been done at a time when it was not done'. In Regina *v.* Ritson, L. R. & Cr. Cas., 200 the owner of land conveyed the same to another, and thereafter conveyed the same premises to his son by another indenture falsely ante-dated so as to make it appear to have been executed before the real sale took place. The vendee caused the parties to be indicted for forgery".

The above account in R concludes:

> "The Attorney-General characterizes this treatment of a reputable citizen and lawyer 'entirely proper'. The Attorney-General has heretofore posed as the special champion of justice and cordial relations among members of the American bar. This case presents a conspicuous opportunity to show by some proper act his sincerity".

From that, as well as what precedes it—"no one of the officials concerned has retracted the accusation or offered any apology", it is clear that the Department of Justice still rules that forgery consists, not in counterfeiting handwriting, but in counterfeiting a right, by means of some paper. Whether the feigned title appear to be conveyed by an ante-dated deed of a grantor who at the real date had no title, or by a counterfeited signature, or by a feigned transcript of a pretended court record really non-existing, the bogus "conveyance" in all these varieties of feigning by writing, was forgery.

R further shows that the Attorney-General was sustained by the then President, now Chief Justice of the United States.

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